
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH - CENTRAL DIVISION

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

UNITED STATES OF AMERICA,
Plaintiff,

v.

BRIAN B. TUCKER,
Defendant.

JUL 26 2010
BY D. MARK JONES, CLERK
DEPUTY CLERK

ORDER

Case No. 2:04-CR-170

Judge Dee Benson


This matter is before the court on defendant Brian Tucker's petition for writ of error coram nobis. (*See* Dkt. No. 236.) Having reviewed the petition, and being fully apprised of the law and facts, the court dismisses Mr. Tucker's petition.

Rule 60(e) of the Federal Rules of Civil Procedure expressly abolishes writs of coram nobis, among others. The Supreme Court has held that relief in the nature of coram nobis is nonetheless available in the criminal context through the All Writs Act. *See United States v. Morgan*, 346 U.S. 502, 507–10 (1954). The coram nobis remedy is used “to attack a judgment that was infirm [at the time it issued], for reasons that later came to light.” *United States v. Torres*, 282 F.3d 1241, 1245 n.6 (10th Cir. 2002). Coram nobis is used only in those rare situations in which a petitioner is no longer in custody and relief under § 2255 or by writ of habeas corpus is thus unavailable. *See Embrey v. United States*, 240 Fed. Appx. 791, 793–94 (10th Cir. 2007) (holding writ of coram nobis is only available when other remedies and forms of relief are unavailable or inadequate); *Godoski v. United States*, 304 F.3d 761, 762 (7th Cir. 2002) (“[C]oram nobis is used only in those rare situations when the defendant is no longer in custody, rendering 28 U.S.C. § 2255 unavailable”). A writ of coram nobis is an extraordinary remedy. *See Carlisle v. United States*, 517 U.S. 416, 429 (1996) (“[I]t is difficult to conceive of a situation in a federal criminal

case today where [a writ of coram nobis] would be necessary or appropriate.”). Here, the premise of coram nobis is unsatisfied because Mr. Tucker is in federal custody with other forms of relief available to him. Accordingly, Mr. Tucker’s petition is dismissed.

IT IS SO ORDERED.

DATED this 26th day of July, 2010.



Dee Benson
United States District Judge